

Office of Chief Counsel
Internal Revenue Service

memorandum

CC:LM:RFP:STP:TL-N-5894-00
JForsberg

date: December 11, 2000

to: Mike Beckman
Case Manager, Group 1250

from: Associate Area Counsel (LMSB)
North Central District, St. Paul

subject: [REDACTED] Form 872

Our advice has been requested as to the proper form for a Form 872 to extend the statute of limitations for [REDACTED] for its taxable year ended [REDACTED]. For the reasons discussed, we believe that the Form 872 should be executed in the manner set forth below.

FACTS

For its taxable year ended [REDACTED], [REDACTED] (EIN: [REDACTED]) (" [REDACTED] ") filed a Form 1120-REIT as a real estate investment trust ("REIT") under Subchapter M of Chapter 1 of Subtitle A. The statute of limitations for [REDACTED]'s taxable year [REDACTED] will expire on [REDACTED]. In [REDACTED], [REDACTED] was utilized by [REDACTED] (" [REDACTED] ") in a fast-pay stock transaction (also known as step-down preferred stock transaction). [REDACTED] is still in existence but has been dormant since [REDACTED].

DISCUSSION

As a threshold matter, you have asked our opinion as to whether a statute extension should be solicited from [REDACTED] in connection with the fast-pay stock transaction. At this point we are of the opinion that the adjustments ultimately proposed with respect to the fast-pay stock transaction will likely all be made to [REDACTED], the holder of [REDACTED]'s common stock. However, as neither the facts nor the Service's legal position are yet fully developed, we recommend that you secure a Form 872 from [REDACTED] for its taxable year [REDACTED] to keep open the option of making adjustments to [REDACTED]'s return.

The Form 872 solicited from [REDACTED] should be prepared in the name of "[REDACTED]" and [REDACTED]'s full address as shown on its return (" [REDACTED] ") should be shown in the space for the taxpayer's address. As a REIT is taxable under Subchapter M, Chapter 1, of Subtitle A, the type of tax should be shown as "income." The Form 872 should be executed on behalf of the taxpayer by an authorized officer of [REDACTED] and the corporate name above the signature line should be shown as "[REDACTED]". The Form 872 should be executed on behalf of the Director, Field Operations, according to the current LMSB delegation order. At the time the Form 872 is solicited, the taxpayer should be advised of its right to refuse to extend the statute or limit the scope of the extension as provided under I.R.C. § 6501(c)(4)(B).

As noted, the incidence of taxation for any adjustments proposed with respect to the fast-pay stock transaction will most likely fall on [REDACTED], the holder of [REDACTED]'s common stock. The statute of limitations for assessing any such adjustments will be [REDACTED]'s statute of limitations. It is our understanding that you will be securing a Form 872 from [REDACTED] for its taxable year [REDACTED]. A Form 872 extending the statute for [REDACTED]'s taxable year [REDACTED] will keep open the statute for the assessment of any additional tax due from [REDACTED] for that year on account of the fast-pay stock transaction.

If you have any questions concerning this matter, please call Jack Forsberg at (651) 290-3473, ext. 227.

REID M. HUEY
Associate Area Counsel (LMSB)

By: *Jack Forsberg*
JACK FORSBERG
Special Litigation Assistant

cc: Associate Chief Counsel
(Procedure and Administration)